

REMARKS

This is in response to the Office Action of September 24, 1992, Paper No. 5. Reconsideration is respectfully requested.

By this Amendment, claims 7 and 8 have been amended and new claims 12 and 13 have been added. Thus, claims 1 through 9 and 12-13 remain for examination; claims 10 and 11 are non-elected and withdrawn from further consideration. The specification has also been amended to correct the errors pointed out by the Examiner.

Applicant hereby affirms the election of the Group I invention, original claims 1-9, made during a telephone request on August 4, 1992. The invention of Group I, original claims 1-9, is made with traverse. Claims 10-11 may be withdrawn from further consideration, subject to refiling in a divisional application. Newly added claims 12 and 13 are within the invention of Group I and should be examined therewith.

Reconsideration of the restriction requirement is respectfully requested. It is submitted that the subject matter of the method claims should properly be examined with the elected apparatus claims.

Claims 1-4 are indicated as allowable. Claims 8 and 9 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. By this Amendment, claim 8 has been placed in independent form and incorporates all of the limitations of the original base claim 7. In addition, claim 8 has been amended to define one end of the cylindrical partition being "substantially" adjacent the outermost

extremity of the spray nozzle to avoid the obvious inequity in allowing an infringer to move the partition a minor amount. Claim 9 remains dependent upon claim 8. Thus, claims 8 and 9 are now in condition for allowance.

In the first Office Action, the Examiner indicated that the shielding means, if defined to be a cylindrical partition would define over the art of record and, in particular, the venturi of the Larson patent, 3,110,626. Accordingly, claim 7 has now been amended to expressly recite that the shielding means comprises such a cylindrical partition. Accordingly, it is now believed that claim 7, as amended, is in condition for allowance.

In the first Office Action, original claims 5-7 were rejected under 35 U.S.C. § 103 as being unpatentable over the Larson patent. Claim 7, as discussed above, has now been amended to avoid the Larson patent. Claims 5 and 6 remain in their original form.

Claims 5 and 6, as well as newly added claims 12 and 13 are written in Jepson format, as was noted by the Examiner. A Jepson claim, i.e. a claim written in accordance with 37 C.F.R. 1.75(e) is to be considered as a combination claim. As set forth in MPEP 608.01(m), "[t]he preamble of this form of claim is considered to positively and clearly include all the elements or steps recited therein as a part of the claimed combination." See, also, Pentec, Inc. v. Graphic Controls Corp., 776 F.2d 309, 315, 227 U.S.P.Q. 766 (Fed. Cir. 1985). Thus, in construing a Jepson claim, all of the elements recited in the preamble are part of the

overall combination and cannot be ignored in interpreting the scope of the claim. That is, even though the portion of the claim recited in the preamble is not the point of novelty, nevertheless, such limitations are part of the overall combination. Surely, an applicant should not be prejudiced by formulating a claim in Jepson format, as opposed to positively reciting all of the claimed features separately in the main body of the claim, in determining the obviousness of the claimed subject matter.

In the first Office Action, the Examiner stated his position that the venturi 32 of Larson, specifically the entrance cone 35 and the throat region 37, is structurally equivalent to a shielding means. It is respectfully submitted that this observation is incorrect. As is set forth in column 3, beginning at line 32, of Larson, the purpose of the venturi is to provide a means for supporting the discrete particles to be coated within the coating chamber with a minimum pressure loss. As is set forth in the Larson patent, the venturi is a substitute for a screen which is stretched across the base region and which causes considerable pressure drop in the gas stream. The use of the venturi "eliminates any need for a screen." Col. 3, lns. 44-45. Thus, it is respectfully submitted that the venturi 32 of Larson does not provide any means for performing the function as recited in claims 5 and 6 or in claims 12 and 13 as now added to the application, i.e. the venturi does not perform the claimed function of shielding the initial spray pattern developed by the nozzle against the entrance of particles moving through the fluidized bed.

Not only does Larson fail to disclose or suggest any shielding means for performing the shielding function as described in claims 5, 6, 12, and 13, but there are additional distinctions between the claims and the Larson patent that are not obvious to one of ordinary skill in the art. For example, claim 5 recites a product container including a substantially cylindrical partition for defining an inner upbed area and an outer downbed area and a spray nozzle mounted substantially centrally within said cylindrical partition. The only embodiment of Larson that could possibly be interpreted to include these features would be the Fig. 2 embodiment where the nozzle is disposed within the velocity concentration control cone 13. However, claim 5 of the instant application also recites that the shielding means is positioned adjacent said spray nozzle for shielding the initial spray pattern developed by said nozzle. The venturi 32 of Larson most certainly is not adjacent the spray nozzle and does not perform the function as recited in claim 5. Thus, if Fig. 2 of Larson is considered applicable, it is clear that the venturi 32 does not and cannot shield anything exiting the spray nozzle exit port 58.

To the extent that the Examiner relies on other embodiments of the Larson patent such as the embodiments depicted in Figs. 1 and 4, such embodiments disclose the spray nozzle disposed below the cone 13, outside of the product container. This is clearly contrary to claim 5 which recites that the spray nozzle is mounted substantially centrally within the cylindrical partition that is within the product container.

Claim 6 recites a product container that opens downwardly into a lower plenum chamber through an air distribution plate/screen. The product container is, thus, above the plate/screen and includes a discharging spray nozzle. Again, the only possible embodiment of Larson that discloses a spray nozzle in the product container is Fig. 2. But, as with claim 5, Larson shows no means for shielding the initial spray pattern developed by the nozzle since the venturi is situated below the nozzle exit port 58. The other embodiments of Larson are deficient for the same reasons as discussed above with respect to claim 5.

Newly added claim 12 is an independent claim that recites a product containing means and a discharging spray nozzle within the product containing means. A shielding means is recited as being located within the product containing means adjacent the spray nozzle for shielding the initial spray pattern developed by the nozzle against the entrance of particles moving within the fluidized bed. Again, for the same reasons as discussed above, the Larson patent fails entirely to disclose this combination.


Newly added claim 13 is dependent from claim 12 and further recites the shielding means as surrounding the spray nozzle and disposed at a level substantially adjacent the outermost extremity of the spray nozzle. Certainly the embodiment of Fig. 2 of Larson does not disclose this combination. The remaining embodiments of Larson are also deficient in that the spray nozzle is not within the product container.

Thus, all of the claims define over Larson and are in condition for allowance.

It is noted that the drawings are objected to as being informal. Correction will be made at the appropriate time.

Thus, this application is now in condition for allowance. Should the Examiner have any questions after reviewing this Amendment, he is cordially invited to telephone the undersigned attorneys so that this application may receive an early notice of allowance.

Respectfully submitted,

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